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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,251

03/09/2005

Jean Taylor

5910-273

2831

65901

7590

05/27/2009

MEDTRONIC

Attn: Noreen Johnson - IP Legal Department

2600 Sofamor Danek Drive

Memphis, TN 38132

EXAMINER

WOODALL, NICHOLAS W

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

05/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,251	Applicant(s) TAYLOR, JEAN	
	Examiner Nicholas Woodall	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-21, 26-28, 33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-21, 26, 27 and 36-40 is/are allowed.
- 6) ☒ Claim(s) 28, 33, 35, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 02/27/2009.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 28, 33, 35, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquet (U.S. Publication 2004/0117017) in view of Taylor (U.S. Patent 6,626,944) and Senegas (U.S. Publication 2004/0024458).

4. Claims 28, 33, 35, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquet (U.S. Publication 2004/0117017) in view of Taylor (U.S. Patent 6,626,944).

Pasquet discloses a device comprising an interspinous wedge (10) inserted between the spinous processes of two vertebrae, a strap comprising two elements engaged around the two spinous processes and the wedge, and first and second lateral transmission elements disposed between the strap and the wedge. The wedge includes a first end and a second opposite end, wherein each end comprises a recess bound by two lugs, wherein the recesses are shaped to receive the spinous processes and first and second lateral sides extending from the first end to the second end. The strap forms a first and a second compressive element disposed on opposite lateral sides of the wedge to maintain the position of the wedge. The lateral transmission elements include

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small bars (34) connected to a support plate, wherein the lateral transmission elements are disposed between the strap and the wedge and are capable of pressing against the middle of the lateral sides in a direction transverse to the longitudinal axis of the wedge and do not extend through a sagittal plane defined by the spinous processes in the space between the spinous processes. Pasquet fails to disclose the device wherein the wedge includes at least one elastically deformable zone and the strap comprising a single element. Taylor teaches an interspinous wedge manufactured from a multi-directionally flexible and elastic material including at least one elastically deformable zone in order to provide a device that allows the lugs to "self close" against the lateral faces of the spinous apophyses during compression (column 2 lines 4-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wedge of Pasquet manufactured from a multi-directionally flexible and elastic material including at least one elastically deformable zone in view of Taylor in order to provide a device that allows the lugs to "self close" against the lateral faces of the spinous apophyses during compression.

Regarding the strap comprising a single element, Pasquet discloses a device comprising a strap that includes two separate elements in order to fix the device to two adjacent spinous processes. Senegas teaches a device comprising an interspinous wedge and a strap comprising a single element in order to fix the device to two adjacent spinous processes. Because both the device of Pasquet and the device of Senegas teach device comprising straps, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one strap for the other in

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order to achieve the predictable results of fixing the interspinous wedge to two adjacent spinous processes.

Allowable Subject Matter

5. Claims 14-21, 26, 27, and 36-40 are allowed.

Response to Arguments

6. Applicant's arguments, see the applicant's arguments/remarks, filed 02/27/2009, with respect to claims 14, 26, 28, 33, 36, and 38 have been fully considered and are persuasive. The rejections of claims 14, 26, 28, 33, 36, and 38 have been withdrawn.

7. Applicant's arguments, see the applicant's arguments/remarks, filed 02/27/2009, with respect to the rejection(s) of claim(s) 28, 33, 35, 41, and 42 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the Senegas reference as discussed above. The new grounds of rejection are directed to the applicant's arguments to claims 28 and 35. The new grounds of rejection were not necessitated by the amendment making this office action non-final.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775